MEMORANDUM

SUBJECT: Corrected Attachment I for PWSS Settlement Penalty Calculation Worksheet

FROM: Kathy Summerlee, Deputy Director
Water Enforcement Division
Office Of Regulatory Enforcement, OECA

TO: Regional Water Management Division Directors
Regional Counsels

On May 25, 1994, under signature of Jim Eder and Fred Stiehl, we distributed the Agency's New Public Water System Supervision Program Supplement Penalty Policy. Attachment I to the Penalty Policy contained a two part worksheet setting forth in summary form how to perform the penalty calculation. The worksheet erroneously had the adjustment factors for degree of wilfulness and history of noncompliance applying to the combined gravity and economic benefit amount. This was a mistake as the text of the policy clearly has these two adjustment factors apply only to the gravity amount.

We have corrected the worksheet to make it fully consistent with the Policy. We have made several other minor clarifying changes to the worksheet. There are no changes to the text of the policy. We would appreciate if you would discard the prior worksheet and substitute the attached corrected worksheet.

Thank you for your assistance. If you have any changes, you may call David Hindin, 202 501-6004, Andy Hudock, 201 501-6032, or Betsy Devlin, 202 260-5550.

Attachment

cc: (w/attachment)

ORC Water Branch Chiefs
Regional PWSS Branch Chiefs
ORE Water Division staff
PWS Regionals Attorneys
John Cruden, DOJ
Joel Gross, DOJ

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ATTACHMENT 1 (Corrected 6/14/94)
PWSS SETTLEMENT PENALTY CALCULATION WORKSHEET

INSTRUCTIONS: For each type of violation (see Attachment 2) to be alleged in the administrative or Judicial complaint calculate the statutory maximum penalty, the economic benefit and gravity and record the results in Part A of the worksheet. Complete a separate Part A worksheet for each type of violation, then complete Part B.

NAME OF CASE: ____________________________________________

COMPLETED BY: ____________________ Date Completed: ____________

PART A

<table>
<thead>
<tr>
<th>IDENTIFY VIOLATION TYPE:</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. STATUTORY MAXIMUM PENALTY FOR THIS VIOLATION TYPE</td>
</tr>
<tr>
<td>a. Length of violation (in days)</td>
</tr>
<tr>
<td>b. Penalty Amount (see II. Statutory Basis in text of Policy for amounts)</td>
</tr>
<tr>
<td>c. Maximum Penalty (line 1.a x line 1.b if not administrative)</td>
</tr>
<tr>
<td>2. ECONOMIC BENEFIT FOR THIS VIOLATION TYPE (attach BEN computer model printouts or other documentation)</td>
</tr>
<tr>
<td>3. GRAVITY FOR THIS VIOLATION TYPE</td>
</tr>
<tr>
<td>a. Gravity factor amount (from Attachment 2 Types of Violations)</td>
</tr>
<tr>
<td>b. Service population</td>
</tr>
<tr>
<td>c. Months in violation (_________) divided by 12</td>
</tr>
<tr>
<td>d. Gravity Component: Line 3.a x line 3.b x line 3.c</td>
</tr>
<tr>
<td>4. ECONOMIC BENEFIT + GRAVITY COMPONENT SUM (line 2 + line 3.d)</td>
</tr>
</tbody>
</table>
## PART B

### 5. TOTALS FROM ALL PART A WORKSHEETS (for each violation type)

- a. Sum of amounts in line 3.d from all Part A worksheets (total gravity for all violation types)
- b. Sum of amounts in line 2 from all part A worksheets (total economic benefit for all violation types)

### 6. GRAVITY ADJUSTMENTS

- a. Degree of Willfulness/Negligence factor (Select a factor value between 1.0 and 2.0)
- b. History of Noncompliance factor (Determine factor value based on instructions on page 7 of policy)
- c. Total Adjusted Gravity Amount (line 6.a x line 6.b x line 5.a)

### 7. PRELIMINARY PENALTY AMOUNT

(line 5.b + line 6.c)

### 8. LITIGATION CONSIDERATION REDUCTION AMOUNT

Attach legal explanation to justify any reduction on separate sheet.

### 9. ABILITY TO PAY REDUCTION AMOUNT

Attach financial analysis to justify any reduction on a separate sheet.

### 10. CREDIT AMOUNT FOR ANY SEPS

Amount may not exceed after-tax present value of project(s).

### 11. BOTTOM-LINE CASH SETTLEMENT PENALTY AMOUNT

Line 7 - (line 8 + line 9 + line 10)
PWSS Civil or Complaint for Penalty Calculation Worksheet

I. Calculate Statutory Maximum Penalty
   (A) Length of Violation (in days) 5220
   (B) Maximum Penalty $25,000
   Complaint for Penalty - $5,000
   Civil Penalty - $25,000/day
   Section 1431 orders - $5,000/day
   STATUTORY MAXIMUM PENALTY
   (If not an administrative Penalty, AxB) $130,500,000

II. Calculate Economic Benefit Component $4,300
    Determine avoided and delayed costs through BEN model or
    other reasonable methodology. This must be documented

III. Calculate Gravity component
    (C) Actual or Possible Harm to Human Health 2.4
    Level 1 - 1.1 - 1.5
    Level 2 - 1.6 - 2.0
    Level 3 - 2.1 - 2.5

    Population
    Months in violation
    Years in violation

    (D) Duration of Non Compliance 17400

    GRAVITY COMPONENT (CxD) $41,760
    (no less than $1,000 in civil judicial and for PWSs serving
    over 3,300 people in administrative cases)

    ECONOMIC BENEFIT + GRAVITY COMPONENT $46,060

IV. Adjustment Factors

    (E) Degree of Willingness or Negligence (1.0 - 2.0) 1.0

    (F) History of Non Compliance
    (a factor between 1.0 and 1.3 for each enforcement action issued)

    PRELIMINARY SETTLEMENT AMOUNT $70,300

    (H) Ability to pay (to decrease penalty),
(Amount of money)  

(I) Litigation Considerations  
(0.01 - 0.5, 1)  

FINAL SETTLEMENT AMOUNT  
(Preliminary Settlement Amount - H) x 1 - I  

<table>
<thead>
<tr>
<th>Parameters</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Months in Violations in last 5 years</td>
<td>36</td>
</tr>
<tr>
<td>Years in violation in last 5 years</td>
<td>3.0</td>
</tr>
<tr>
<td>Municipality and Nonprofit Assoc.</td>
<td></td>
</tr>
<tr>
<td>Litigation Consideration</td>
<td>$12,900</td>
</tr>
</tbody>
</table>
